

Before the
Federal Communications Commission
Washington, D.C.

In the Matter of:)	
)	
Petition of Cablevision of Raritan Valley, Inc.)	
For a Determination of Effective Competition in)	CUID No. NJ0027
)	CSR-5847-E
Aberdeen, NJ)	
Bound Brook, NJ)	Comments of the New Jersey
Green Brook, NJ)	Division of the Ratepayer
Old Bridge, NJ)	Advocate
Raritan, NJ)	
South Bound Brook, NJ)	
Sayreville, NJ		
Warren, NJ		

To: Chief, Media Bureau

The New Jersey Division of the Ratepayer Advocate (“Ratepayer Advocate”) hereby submits its comments in opposition to the above referenced petitions. On January 31, 2003, Cablevision of Raritan Valley, Inc. (“Cablevision”) filed the above petitions at the Federal Communications Commission (“Commission”) seeking determination of effective competition in Aberdeen, NJ; Bound Brook, NJ; Green Brook, NJ; Old Bridge, NJ; Raritan, NJ; South Bound Brook, NJ; Sayreville, NJ; and Warren, NJ (individually, a “Community,” and collectively, the “Communities”).

I. Cablevision Must Rebut the Presumption That Effective Competition Does Not Exist.

Section 623 of the Communications Act of 1934, as amended by Section 301 of the Telecommunications Act of 1996,¹ provides that subscriber rates of cable television systems are subject to either local or federal regulation where effective competition is absent.² Cable operators filing petitions for revocation of local franchising authority on the grounds of effective competition must prove that they face competition under one of the four tests set forth in Section 76.905(b) of the Commission's rules.³

One basis upon which a cable operator may be deemed subject to effective competition is the competing provider test. Under the competing provider test, a cable system is subject to effective competition if the franchise area is: (1) served by at least two unaffiliated multichannel video programming distributors ("MVPDs"), each of which offers comparable programming to at least 50 percent of the households in the franchise area; and (2) the number of households subscribing to multichannel video programming other than the largest multichannel video programming distributor exceeds 15 percent of the households in the franchise area.⁴ A finding of effective competition exempts a cable operator from rate regulation.⁵ Cable operators seeking relief from rate regulation must

1 Pub. L. No. 104-104, 100 Stat. 56, approved February 8, 1996.

2 47 U.S.C. § 543(a)(2).

3 47 C.F.R. § 76.905(b).

4 47 U.S.C. § 623(l)(1)(B); See also, 47 C.F.R. § 76.905(b)(2).

5 47 C.F.R. § 76.905.

meet the burden of proving that they are subject to effective competition.⁶ Thus, the burden is on Cablevision to demonstrate that its systems are subject to effective competition under the competing provider test.

In its petition, Cablevision asserts that it meets the second prong of the competing provider test because direct broadcast satellite (“DBS”) providers (namely DirecTV and Echostar’s Dish Network) serve in excess of fifteen percent of the households in each of the Communities.

The Ratepayer Advocate submits that Cablevision’s petitions contain certain errors and shortcomings that are fatal to a finding of effective competition under the second prong of the competing provider test. Cablevision fails to meet its burden to demonstrate that it is subject to effective competition for the following reasons: (1) Cablevision does not use data of DBS penetration and data of the number of households that are comparable in time which results in an inaccurate presentation of DBS market penetration, and (2) Cablevision has not updated household data to reflect new households added since the 2000 census.

II. Cablevision’s Presentation Mixes Data from Different Dates, and Does Not Present Complete Counts, Making It Impossible To Determine If Competition Exists

Cablevision uses data from the 2000 Census to determine the number of households. However the SkyTrends data that Cablevision presents is from a survey conducted in the year 2002. This two-year differential is important because some of the Communities are very close to 15% market share. For example, if Sayreville added 160

⁶ See In re C-Tec Cable Systems of Michigan, Inc., 10 F.C.C.R. 1735, 1736 (1995); *See also*, Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, 8 F.C.C.R. 5631, 5669-70 (1993) (hereinafter referred to as “Report and Order”).

households, (or a moderate apartment or townhouse development), over the two year period between the household census and the market study, it would not qualify, dropping to 14.99%. The Ratepayer Advocate obtained from various Communities the number of Certificates of Occupancy (“COs”) issued from January 1, 2000 through December 31, 2002 (see Declaration of Toni Coleman-Lord, Exhibit 1). The results of that inquiry, and the effect on DBS penetration, are shown below in Table I.

Table I
Effect of New COs on Market Penetration

Municipality	2000 Households	2002 DTH	DTH %	COs issued 2000- 2002	Total Households	New % DTH Penetration
Aberdeen	6421	1020	15.89%	1100	7421	13.74%
Bound Brook	3615	576	15.93%	1176	4791	12.02%
Green Brook	1893	360	19.02%	72	1965	18.32%
Old Bridge	21438	3534	16.52%	985	22423	15.76%
Raritan	2556	430	16.82%	62	2618	16.42%
South Bound Brook	1632	261	15.99%	5	1637	15.94%
Sayreville	14955	2266	15.22%	516	15471	14.65%
Warren	4629	858	18.54%	252	4881	17.58%

As is clear from the table, adding the new households results in a number of the Communities falling below fifteen percent. Aberdeen, Sayreville and Bound Brook fall below fifteen percent.

Cablevision carries the burden of showing that competitors have in excess of 15% of the market. At the very least, Cablevision must show that competitors have 15% of the households that exist at the time of filing, not 15% of the households that existed two years before they filed this petition. In addition, even the SkyTrends data is six months old, and does not account for any cancellations in the six months that have lapsed

between the survey and the filing of the petition. This time lag could result in customers canceling their DBS service, and thus reducing their penetration in the various markets. Due to the failure to provide current household data and DBS market penetration data, none of the petitions should be granted.

Additionally, as noted earlier, the Commission's regulations state that each separately billed or billable customer will count as a household. Accordingly, a single household, as counted by the census figures relied upon by Cablevision, could be two or more households, as defined in the regulations. Cablevision, which presumably knows its subscribers and their addresses, offered no evidence on whether its household numbers are adjusted for multi-customer households. In fact, Cablevision makes no mention of this issue in the petition at all. Therefore, Cablevision has failed to meet its burden of proof in this matter, and the Commission cannot determine if the fifteen percent test is satisfied.

Conclusion

Cablevision's petitions for a finding of effective competition is deficient and fails to adhere to the Commission's regulations. By relying upon two year-old household data, Cablevision's petitions are deficient and improperly skews the data in order to find effective competition. Finally, Cablevision has failed to show that it is not undercounting the number of households by its failure to account for multiple customer households

As to each Community, Cablevision has failed to provide adequate, current, and complete information as discussed above, which is crucial in determining compliance with the 15% standard for these Communities. As a result, the Ratepayer Advocate submits that the petitions should be denied for all Communities.

Respectfully submitted,

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ES/dc

CC: Service List

Dated: March 26, 2003